

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 20, 2009

**STATE OF TENNESSEE EX REL. BUFFY DIXON
v. RODNEY M. SPURGEON**

**Appeal from the Cocke County Circuit Court
No. 31,135-II O. Duane Slone, Judge**

No. E2008-01950-COA-R3-CV - Filed July 15, 2009

Rodney M. Spurgeon (“Father”) appeals the Trial Court’s order awarding Buffy Dixon (“Mother”) \$46,812.00 for child support arrears. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Brad L. Davidson, Newport, Tennessee, for Appellant, Rodney M. Spurgeon.

Robert E. Cooper, Jr., Attorney General and Reporter, and Warren A. Jasper, Senior Counsel, General Civil Division, Nashville, Tennessee, for Appellee, State of Tennessee ex rel. Buffy Dixon.

MEMORANDUM OPINION¹

Background

In March 1990, the Sevier County Juvenile Court ordered Mother and Father to submit to a blood test to determine paternity of Schaandra Nalley (“the Child”).² Father submitted to testing, but Mother failed to appear and was held in contempt of court. The paternity issue was revived in the Cocke County Juvenile Court in 2000, when Mother and Father were again ordered to submit

¹Rule 10 of the Rules of the Court of Appeals provides: “This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated ‘MEMORANDUM OPINION,’ shall not be published, and shall not be cited or relied on for any reason in any unrelated case.”

²The Child is no longer a minor, as she was born on January 1, 1987.

to paternity testing. When testing determined Father to be the biological parent of the Child, the Cocke County Juvenile Court entered an order April 2, 2001, granting both current support and retroactive support from the date of the Child's birth.

In March 2008, the Cocke County Juvenile Court found Father in child support arrears and reset the required current child support amount. The Juvenile Court concluded Cocke County had jurisdiction in this matter. The county's Circuit Court affirmed the Juvenile Court's judgment. Father appeals, claiming Cocke County was not the proper venue.

Discussion

Our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Father asserts that Cocke County Juvenile Court did not have proper venue because the Sevier County Juvenile Court had previously acquired jurisdiction and that case had not been dismissed or transferred. Father relies upon Tenn. Code Ann. § 37-1-103(c), which states in part: "[w]hen jurisdiction has been acquired under the provisions of this part, such jurisdiction shall continue until the case has been dismissed, or until the custody determination is transferred . . ."

The record before this court contains an "Order of Voluntary Non-Suit" reflecting that the initial matter in Sevier County Juvenile Court was dismissed without prejudice in 1991. Per Tenn. Code Ann. § 37-1-103(c), Sevier County's jurisdiction therefore continued until 1991, when the case was dismissed. Therefore, transfer was not necessary.

As noted, the Cocke County Juvenile Court concluded it had jurisdiction. Tenn. Code Ann. § 36-2-307, which is part of the paternity and legitimation statutes, in relevant part, provides:

§ 36-2-307. Jurisdiction – Venue. – (a)(1) The juvenile court or any trial court with general jurisdiction shall have jurisdiction of an action brought under this chapter; . . .

(2) The court shall have statewide jurisdiction over the parties involved in the case.

(b) Any minimum contact relevant to a child's being born out of wedlock that meets constitutional standards shall be sufficient to establish the jurisdiction of the courts of Tennessee over the parents for an action under this chapter. Any conduct in Tennessee that results in conception of a child born out of wedlock shall be deemed sufficient contact to submit the parents to the jurisdiction of the courts of Tennessee for action under this chapter.

(c)(1) The complaint may be filed in the county where the father resides or is found, the county where the mother resides or is found, or the county in which the child resides or is present when the application is made. . . .

The record reveals that Father and the Child have lived in Cocke County during the pendency of this action, so venue was proper there.

Additionally, Father waived a challenge to venue. A party's objections to personal jurisdiction and venue are deemed waived unless they are raised in a timely manner. *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977). Accordingly, if a party makes a general appearance and does not challenge venue, that party has waived its objection. *Taylor v. Taylor*, 903 S.W.2d 307, 308 (Tenn Ct. App. 1995). See also *P.E.K. v. J.M.*, 52 S.W. 3d 653, 660 (Tenn. Ct. App. 2001).

The Tennessee Rules of Civil Procedure do not define a general appearance. *Patterson v. Rockwell Int'l*, 665 S.W.2d 96, 99 (Tenn. 1984). All appearances are considered general appearances unless the contrary appears. *Akers v. Gillentine*, 231 S.W.2d 372, 376 (Tenn. Ct. App. 1950). More specifically, general appearances are comprised of acts from which it can be reasonably inferred that the party recognizes and submits itself to the jurisdiction of the court. *Patterson*, 665 S.W. 2d at 99-100; H. Gibson, *Gibson's Suits in Chancery* § 146 (6th ed. 1982).

While in *Landers v. Jones*, 872 S.W. 2d 674 (Tenn. 1994), the Supreme Court limited the application of *Akers v. Gillentine* to appearances that contest the merits of the plaintiff's filing without raising the jurisdictional defense, *id.* at 676, we find that Father has waived the venue issue even under the more restrictive *Landers* test. Father made multiple appearances in the Cocke County Juvenile Court concerning this child support matter without challenging venue. He was represented by counsel at each hearing. This issue has no merit.

Father also challenges the Cocke County Juvenile Court's April 2, 2001 order granting retroactive child support in the amount of \$36,504.00. Rule 4 of the Tennessee Rules of Appellate Procedure requires a Notice of Appeal to be filed within thirty days after the date of entry of the final order. The Advisory Commission Comments point out that "[t]hirty days is sufficient time particularly in light of the fact that a party is required to do nothing to initiate the appellate process except file and serve notice of appeal." Thirty days from April 2, 2001, has long passed.

Conclusion

The judgment of the Trial Court is affirmed and this case is remanded to the Trial Court for such further proceedings, if any, as may be required, consistent with this opinion, and for collection of the costs below. The costs on appeal are assessed against Appellant, Rodney M. Spurgeon.

JOHN W. McCLARTY, JUDGE